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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,038	07/27/2001	Wolfram Junghanns	010470	9918

7590 09/17/2007

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EXAMINER	
HOFFMAN, SUSAN COE	
ART UNIT	PAPER NUMBER
1655	
MAIL DATE	DELIVERY MODE
09/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/917,038	JUNGHANNS ET AL.	
	Examiner	Art Unit	
	Susan Coe Hoffman	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *10 and 11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/01*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-11 are currently pending.

Election/Restrictions

2. Applicant's election with traverse of sunflower oilseeds for species A and basil for species B in the reply filed on May 2, 2006 is acknowledged. The traversal is on the ground(s) that a search of all of the species would not be burdensome. This is not found persuasive because a search of one species would not necessarily be coextensive with the other species. Thus, a search of all of the species would be burdensome. Applicant also argues that the restriction between the species places an undue burden on the applicant in regards to filing fees, etc. and is not in the interest of compact prosecution. However, applicant is only entitled to have one invention per patent. The different species are potentially patentably distinct and a search of all of the species would be unduly burdensome to the examiner. Thus, it is completely proper to require election of species for the claimed invention.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 10 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 2, 2006.

4. Claims 1-9 are examined on the merits in regards to the elected species.

Priority

5. Acknowledgment is made of applicant's claim for foreign priority based on applications 100 02 220.0 and 101 01 638.7 filed in Germany on July 20, 2000 and January 16, 2001, respectively. It is noted, however, that applicant has not filed a certified copy of the German applications as required by 35 U.S.C. 119(b).

Information Disclosure Statement

6. Applicant did not provide a copy of Germany Pat. No. 41 25 415 cited on the IDS filed in July 2001. Thus, this reference has not been considered by the examiner.

Specification

7. The disclosure is objected to because of the following informalities: the Examples are not numbered consecutively. The specification contains three examples numbered as "Example 1" and three examples numbered as "Example 2." This is improper. The numbering of the examples must be consecutive and preserved throughout the specification.

Appropriate correction is required.

Claim Objections

8. Claim 1 is objected to because of the following informalities: in line 7 "parts" is misspelled as "arts". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite because it is unclear how the oilseeds must be "prepared" in order to meet the limitation that the oilseeds are "prepared" prior to cold-pressing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Sadeleer et al. (US Pat. No. 5,725,900) in view of Segers (US Pat. No. 5,696,278).

De Sadeleer teaches a method of copressing wheat germ together with oilseeds to produce an oil with mixed wheat germ and seed oils. The reference teaches that the wheat germ oil contains medicinal properties (see column 1, first two paragraph). Thus, the wheat germ oil is considered to be a medicinal essential oil. The reference teaches that the oilseeds can be sunflower seeds (see column 2, lines 26-30). The sunflower seeds are dehulled (see bottom of column 2). The oilseeds and wheat germ are mixed in a ratio of 10:90 to 90:10 (see column 2, lines 47-49). The mixture is then cold pressed to produce the mixed oil product (see Examples).

The reference does not specifically teach filtering the mixed oil after the cold pressing and does not teach that the cold pressing results in an expeller cake. The reference also does not teach controlling the moisture of the wheat germ.

Segers teaches that cold pressing results in an oil product and a cake. Seger teaches separating the cake from the oil product and then filtering the oil to obtain a refined oil (see figure 1). Thus, it was known in the art at the time of the invention that to obtain oils by cold pressing the expeller cake needs to be removed from the oil and the oil needs to be filtered. Based on this knowledge, an artisan of ordinary skill would expect that these steps would need to be added to the cold press process used in De Sadeleer in order to achieve a purified oil product. This reasonable expectation of success would motivate the artisan to modify the cold press procedure of De Sadeleer to include removal of the expeller cake and filtering of the oil as taught by Segers.

Segers also teaches that the moisture of the vegetable matter used in a cold pressing process needs to be controlled in order to minimize impurities. The reference recommends a moisture content below 16% (see column 1, lines 56-65). Thus, an artisan of ordinary skill would be reasonably expect that controlling the moisture content in the oilseeds and wheat germ used in De Sadeeler would help achieve a more purified product. This reasonable expectation of success would motivate the artisan to modify De Sadeeler to include a moisture controlling step.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Sadeeler and Seger as applied to claims 1-8 above, and further in view of Beharry et al. (US Pat. No. 5,607,715).

The teachings of De Sadeeler and Seger and discussed above. De Sadeeler teaches that cold pressing oils together is a means to achieve an oil with the positive characteristics of both oils. However, the reference does not specifically teach using basil. Beharry teaches using essential oils from plants to flavor oils such as sunflower oils. Basil is a preferred spice to use in flavoring the oils (see column 2, lines 40-44 and column 4, lines 41-59). Thus, Beharry shows that it was known in the art at the time of the invention that it is beneficial to mix basil with sunflower oil in order to impart a flavor improvement on the sunflower oil. An artisan of ordinary skill in the art would reasonably expect that the copressing method taught by De Sadeeler and Seger could be used to copress the oil from basil and the oil from sunflower seeds in order to produce a mixed oil that would be a basil flavored sunflower oil as taught by Beharry. This reasonable expectation of success would motivate the artisan to modify the references in this manner.

12. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe Hoffman whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday-Thursday, 9:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan Coe Hoffman
Primary Examiner
Art Unit 1655